

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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IN THE MATTER OF)	
)	
SELECTO FLASH SUPERFUND SITE)	
WEST ORANGE, ESSEX COUNTY,)	
NEW JERSEY)	
)	
SELECTO FLASH CORP.,)	ADMINISTRATIVE ORDER
)	DIRECTING COMPLIANCE
Respondent.)	WITH REQUEST FOR ACCESS
)	
)	
Proceeding under Section 104(e))	U.S. EPA Region II
of the Comprehensive)	INDEX NO.
Environmental Response,)	CERCLA-02-2009-2014
Compensation, and Liability Act)	
of 1980, as amended,)	
42 U.S.C. Section 9604(e).)	
-----x)	

I. JURISDICTION

1. This Administrative Order ("Order") is issued to Selecto Flash Corp. ("Respondent") by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the EPA by Executive Order 12580, dated January 23, 1987, duly redelegated to the Regional Administrators of EPA by EPA Delegation No. 14-6 on May 11, 1994, and further redelegated to the Director of the of the Emergency and Remedial Response Division, Region 2, by EPA Region 2 Delegation 14-6 on November 23, 2004.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its officers, employees, agents, contractors and other authorized representatives entry and access to the Property for the purpose of performing a response action at the Selecto Flash Site ("Site"), including but not limited to completing its investigation and conducting sampling activities at the Property. This Order further requires Respondent to refrain from interfering with access to the Property by EPA and its authorized representatives for the purposes set forth herein.



III. FINDINGS OF FACT

3. Respondent is the owner of the 1.25-acre parcel located at 18 Central Avenue in West Orange, New Jersey ("the Property"). According to the Township of West Orange Tax Assessor's Office this parcel is designated as Block 9, Lots 8, 9, 36 and 40; and Block 7, Lot 22, on the Tax Map of West Orange, in Essex County, New Jersey.
4. Respondent currently operates a manufacturing facility on the Property in a mixed industrial/commercial/residential area of West Orange. The front (northeast) portion of Respondent's facility is located along Central Avenue, and the rear (southwest) portion of the facility is located along Mitchell Avenue. Industrial properties are along the northwest and southeast boundaries of Respondent's facility.
5. Respondent's operations at the Property involve the creation of large-format graphics for the transportation industry. From 1980 to the present Respondent has been conducting silk-screening operations, which consist of burning decal images onto screens with ultraviolet light and washing the screens with water and cleaner. The cleaners used on the screens are mainly composed of solvents and secondary alcohol. Spent cleaners and inks are collected in metal troughs, then transferred to 55-gallon drums which are stored on the concrete pad north of the storage building prior to being shipped off-site for disposal as hazardous waste. Wash waters generated from a haze-removal process are discharged directly to the sanitary sewer. During a 1986 site visit conducted by the New Jersey Department of Environmental Protection ("NJDEP") there was some visual evidence suggesting that minor spillage may have occurred at the concrete pad.
6. A 10,000 gallon underground storage tank ("UST"), formerly used to store fuel oil is located beneath the western portion of the Property. When Respondent took possession of the Property in 1980, Respondent filled the empty UST with water. In November 1986, Respondent removed the water from the tank, cleaned the tank and properly disposed of its contents, but Respondent did not remove the tank from the Property.
7. Volatile organic ("VOCs") compounds including, but not limited to, tetrachloroethylene ("PCE") and trichloroethylene ("TCE") have been detected at elevated levels in the soil and groundwater at the Property.
8. Between 1987 and 1988 three subsurface investigations were completed at the Site by NJDEP. Sampling results from those investigations indicated that the soil at the Property was contaminated with ethylbenzene, methylene chloride, PCE, TCE, toluene, and xylene. Similarly, the groundwater sampling showed that the groundwater was contaminated with PCE, TCE, trans-1,2-dichloroethylene (trans-1,2-DCE), vinyl chloride, toluene, xylenes, benzene, and chlorobenzene. NJDEP collected additional groundwater samples in 1993 and 1994 from each on-site monitoring well, which confirmed the presence of VOC contamination similar to that observed in the previous groundwater sampling.
9. On November 17, 1995, Respondent entered into a Memorandum of Agreement ("MOA")

with NJDEP to conduct a Remedial Investigation and Remedial Action at the Site. EPA has been told by an NJDEP representative that while Respondent submitted a Remedial Investigation Work Plan and a Remedial Action Work Plan, which addressed the chlorobenzene contamination at the Property, evidenced in the 1994 sampling, Respondent did not complete any remediation work at the Site pursuant to the MOA.

10. After confirming with NJDEP that no response activities were taking place at the Site, EPA determined that an assessment of the Site needed to be conducted. In late 2007, EPA began its investigation by gathering information about the Site and reviewing NJDEP files.
11. It took EPA almost two months to obtain access to conduct its initial inspection of the Site. In February 2008, EPA initially tried to obtain access to the Property through phone calls to Respondent. After numerous unsuccessful attempts EPA sent a letter to Respondent's President via certified mail and facsimile, with a copy to the Environmental Manager via regular mail and facsimile, but received no response. Finally, after numerous attempts in March 2008, EPA contacted Respondent's Environmental Manager by telephone. In April 2008 Respondent granted EPA access to conduct the inspection of the Site.
12. EPA conducted an on-site reconnaissance on April 3, 2008, which revealed the presence of two buildings on the Property. The main building is a three-story building which is the location of Respondent's silk-screening operations, digital printing operations, and general office space. The other building was the former paint and solvent building and was inaccessible and covered with vegetation at the time of the inspection. Respondent informed EPA that the building was no longer used for paint and solvent storage. EPA also observed three of the four monitoring wells ("MWs") on-site. MW-04 appeared to be in good condition; MW-01 and MW-02 were observed to be in poor condition with flush-mount covers not intact; and MW-03 was not observed because it was covered by debris. Respondent provided EPA with a copy of the sampling results for MW-04 which were collected in November 2002 as part of a neighboring property investigation. The 2002 results for MW-04 indicated the presence of vinyl chloride, TCE, PCE, toluene, and cadmium at elevated levels.
13. Since June 2008, EPA has been trying to coordinate with the Respondent to obtain access to the Property to conduct sampling activities. EPA needs access to the Property to collect surface soil, subsurface soil, and groundwater samples in order to determine the extent of contamination. Soil samples will be obtained using a geoprobe direct-push method, and groundwater samples will be collected from existing on-site monitoring wells, to the extent possible. However, if existing monitoring wells are not functional, EPA may determine that it is necessary to install new monitoring wells.
14. The work that EPA must perform at the Property may include, but will not necessarily be limited to, some or all of the following:
 - a. conducting a survey and assessment of the Site, including the taking of such soil and groundwater samples as may be determined to be necessary;

- b. installation of additional groundwater monitoring wells as may be determined to be necessary;
- c. handling, storing, and disposing of investigation-derived waste; and
- d. taking any other response activities deemed necessary by EPA and that are not inconsistent with the NCP.

EPA estimates that the activities described above may take up to six months to complete.

- 15. In response to Respondent's request, EPA's contractor, Weston Solutions ("Weston"), provided a copy of EPA's Sampling Plan to Respondent's Environmental Manager in a June 26, 2008 e-mail for Respondent's review. The e-mail from Weston to Respondent stressed that the sampling would only take approximately two days. EPA did not discuss with Respondent the additional time needed if EPA determines that new monitoring wells will need to be installed since it felt that issue could be addressed later, if necessary.
- 16. On July 7, 2008, a representative of Respondent, Ms. Sandra Devine, who claimed that she had been asked to help with the project, raised a number of questions and concerns about the extent, methodology, cost, and duration of the sampling.
- 17. On July 8, 2008, Denise Zeno, EPA's Site Assessment Manager for the Site, spoke with Ms. Devine and addressed all of her questions and concerns. As a result, Ms. Devine verbally granted EPA access for the sampling and inquired about EPA's contractor's insurance (i.e., about obtaining a Certificate of Insurance).
- 18. However from July 8, 2008 through August 8, 2008, neither EPA nor Weston were successful in getting in touch with Ms. Devine. EPA wanted to speak to her to set up the schedule for the sampling and to address her concerns regarding the insurance for the sampling activities.
- 19. On August 8, 2008, Weston was able to reach Ms. Devine by telephone. However during that call, Weston was unable to schedule a sampling date with her or obtain the information needed to issue the Certificate of Insurance. Instead, Ms. Devine once again expressed the need to speak with someone from EPA.
- 20. On January 15, 2009, counsel for EPA sent an e-mail to Ms. Devine to schedule a conference call regarding the access issue at the Property. Attached within this e-mail was a Consent for Access form which EPA asked Respondent to sign and which described the activities to be performed at the Property.
- 21. Ms. Devine stated in a January 15, 2009 e-mail that she now needed to have the participation of the principals of her company for the call. She now claimed that she was only the Human Resources Manager for Respondent. Thus, all e-mails sent by EPA to Ms. Devine after January 15, 2009 copied Respondent's Environmental Manager and President.

22. During a January 26, 2009 conference call between counsel for EPA and Ms. Devine and Respondent's principals, EPA again addressed essentially the same questions related to the sampling activities to be performed at the Property as were addressed in the August 8, 2009 call between EPA and Respondent. Specifically, EPA stated to Respondent that:
 - a. no new monitoring wells were anticipated to be drilled;
 - b. groundwater monitoring will be taken from existing monitoring wells, to the extent possible;
 - c. EPA will be taking geoprobe soil samples, and any disturbance to the soil resulting from this sampling will be restored to its original condition to the extent practicable; and
 - d. sampling activities will only take approximately two days, the sampling will be minimally invasive, and Respondent can continue its normal business operations.
23. During the January 26, 2009 conference call Respondent placed unacceptable conditions on access. Counsel for EPA explained to Respondent why its conditions were unacceptable. Respondent then agreed to review the Consent for Access form provided by EPA and to inform EPA within the next few days if it intended to sign it.
24. On January 29, 2009, Ms. Devine, on behalf of Respondent, sent an e-mail to EPA again posing the same questions that she had previously raised with EPA. Further, she again requested a copy of the Sampling Plan which had previously been e-mailed to her on June, 26, 2008. She claimed that she would need to review the Sampling Plan with leadership and production management and obtain their approval prior to allowing access. She also asked that EPA supply a Certificate of Insurance Form.
25. On February 4, 2009, counsel for EPA replied via e-mail to Respondent's January 29, 2009 e-mail. EPA again provided a copy of the Sampling Plan to Respondent. Also, EPA provided an example of its contractor's Certificate of Insurance to Respondent. Further, counsel for EPA once again addressed Respondent's same questions and concerns. Lastly, EPA requested that the Consent to Access form provided to Respondent be signed and returned to EPA no later than close of business on February 11, 2009.
26. On February 10, 2009, Ms. Devine sent an e-mail to counsel for EPA with more of the same questions she and Respondent's principals wanted addressed before they would consider signing the Consent to Access Form. On February 11, 2009, counsel for EPA e-mailed Ms. Devine that EPA had already more than adequately addressed these questions.
27. As of the date of this Order, consent to access to the Property needed to conduct the sampling activities described above has not been granted by Respondent.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the foregoing Findings of Fact and the entire Administrative Record for the Site, EPA has determined that:
 - a. the Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9);
 - b. all of the substances listed in Paragraphs 7 and 8 are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are present at the Site;
 - c. based on the information in Paragraphs 7 and 8, EPA has a reasonable basis to believe that there may be a release or threat of release of a hazardous substance, pollutant or contaminant at the Site, within the meaning of Sections 101(22) and 104(e)(1) of CERCLA, 42 U.S.C. §§ 9601(22) and 9604(e)(1); and
 - d. the release and threatened release of one or more hazardous substances, into the environment at the Site may present an imminent and substantial endangerment to the public health, welfare or the environment.
29. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
30. The Property is controlled by Respondent. The Property is also a facility, establishment, or other place or property:
 - a. where a hazardous substance has been generated, stored, treated, disposed of, or transported from;
 - b. from or to which a hazardous substance has been or may have been released;
 - c. where such release is or may be threatened; and
 - d. where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).
31. Pursuant to CERCLA Section 104(e)(4), 42 U.S.C. § 9604(e)(4), EPA is authorized to inspect and obtain samples from any place or property where any hazardous substance, pollutant or contaminant may be located or has been disposed of.
32. Pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), if consent is not granted regarding a request made by EPA under CERCLA Sections 104(e)(3) or (4), 42 U.S.C. §§ 9604(e)(3) or (4), EPA is authorized to issue an order directing compliance with its request, after such notice and opportunity for comment as is reasonably appropriate under the circumstances.

33. Entry to the Property by EPA officials, agents, contractors, and other authorized representatives is needed to conduct an investigation and sampling activities to determine the extent of soil and groundwater contamination and whether further response actions are warranted at the Site.
34. Respondent has not granted EPA's requests for access to the Property.

V. ORDER

35. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of completing the investigation of the Site and performing the necessary sampling, including but not limited to the following response activities:
 - a. conducting a survey and assessment of the Site, including the taking of such soil and groundwater samples as may be determined to be necessary;
 - b. installation of additional groundwater monitoring wells as may be determined to be necessary;
 - c. handling, storing, and disposing of investigation-derived waste; and
 - d. taking any other response activities deemed necessary by EPA that are not inconsistent with the NCP.
37. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.
38. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.
39. This Order shall apply to and be binding upon Respondent and its successors, each and every agent of Respondent, and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.
40. In the event of any conveyance by Respondent, or Respondent's successors and assigns, of an interest in the Property, Respondent or Respondent's successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondent, or Respondent's agents, successors and assigns, shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest

in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

41. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$37,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Property, and recovery of the costs thereof.
42. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.
43. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Property or any other site.
44. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. OPPORTUNITY TO CONFER

45. Within five (5) business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than three (3) business days after Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two (2) business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

William J. Reilly, Jr., Esq.,
Office of Regional Counsel,
EPA - Region II
290 Broadway - 17th Floor

New York, New York 10007-1866
(212) 637-3154

A request for a conference may be made by telephone but must be confirmed in writing and received by Mr. Reilly on or before five (5) business days after the date that Respondent receives this Order.

VIII. ADMINISTRATIVE RECORD

46. The Administrative Record supporting the issuance of this Order is available for review at the following address, and may be reviewed and copied at reasonable times by arrangement with:

Denise Zeno, Site Assessment Manager
Pre-Remedial Section,
Special Projects Branch
United States Environmental Protection Agency
290 Broadway, 18th Floor
New York, New York 10007-1866
(212) 637-4319

IX. EFFECTIVE DATE; COMPUTATION OF TIME

47. This Order shall be effective seven (7) calendar days after its receipt by Respondent unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this Paragraph may, at EPA's discretion, be provided to Respondent by facsimile or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.
48. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

49. On or before the effective date of this Order, Respondent shall notify EPA in writing whether it will comply with the terms of this Order. Respondent's failure to notify EPA of

its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be (1) construed as a denial of EPA's request for access, and (2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

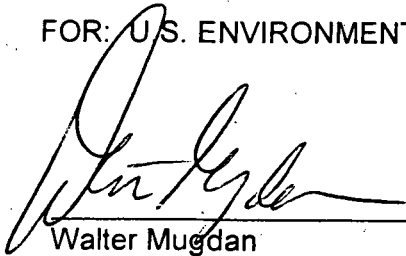
William J. Reilly, Jr., Esq.
Office of Regional Counsel
EPA - Region II
290 Broadway - 17th Floor
New York, New York 10007-1866
(212) 637-3154

XI. TERMINATION

50. This Order shall remain in effect until the Director of the Emergency and Remedial Response Division or his/her designee notifies Respondent in writing that access to the Property is no longer needed.

IT IS SO ORDERED:

FOR: U.S. ENVIRONMENTAL PROTECTION AGENCY



Walter Muggan
Director
Emergency and Remedial Response Division
USEPA Region 2

4/23/2009
Date